

REMARKS

Initially, Applicants would like to thank Examiner Elhilo for the courteous and helpful Interview conducted April 5, 2007, which Applicants believe materially advanced prosecution in this case.

Claims 1-33 are currently pending.

The Office Action rejected claims 1-23 and 25-33 under 35 U.S.C. § 103 as obvious over U.S. patent 5,376,146 (“Casperson”) in view of U.S. patent application publication no. 2003/ 0028979 (“Duffer”), and claims 1, 3, 4, 11, 13-16, 19-22 and 24-26 under 35 U.S.C. § 103 as obvious over U.S. patent 6,004,355 (“Dias”) in view of Duffer. In view of the following comments, Applicants request reconsideration and withdrawal of these rejections.

The invention compositions contain at least one oxidation dye and an alkalinizing agent comprising at least one metasilicate and at least one alkanolamine. Such compositions are beneficial because they address and minimize problems associated with previous compositions containing different alkalinizing agents such as malodor (for example, from ammonia) and irritation (for example, from excess monoethanolamine). (See, page 2, lines 25-28). More specifically, the examples in the present application (at pages 13-15) demonstrate that the claimed compositions having less alkalinizing agent generally (7.45%) and less monoethanolamine specifically (5.45%) have equivalent dyeing properties to compositions containing significantly more alkalinizing agent in the form of monoethanolamine (10%). (See, page 15, lines

11-14). Such comparative compositions containing 10% monoethanolamine would be expected to cause irritation. (See, page 2, lines 27-28). Thus, the claimed compositions have equivalent dyeing properties to compositions containing 10% monoethanolamine but have significantly better sensory characteristics.

Furthermore, as discussed during the Interview and as demonstrated in the Rule 132 declaration submitted concurrently herewith, the invention compositions result in more homogeneous coloring than comparative compositions containing either a silicate or aqueous ammonia (ammonium hydroxide).

In the Rule 132 declaration, three virtually identical compositions were prepared. All three compositions contained dye materials disclosed by Casperson. (See, for example, resorcinol, p-aminophenol (1-hydroxy-4-aminobenzene) and m-aminophenol (1-hydroxy-3-aminobenzene) --- Casperson at col. 8, lines 15-30). These compositions differed in that the composition corresponding to the present invention, Invention Composition A, contained sodium metasilicate and ethanolamine, while the comparative compositions corresponded to Casperson's compositions in which sodium silicate and ethanolamine were combined (Comparative Composition B --- Casperson at col. 5, lines 21 and 27) and in which ammonium hydroxide and sodium metasilicate were combined (Comparative Composition C --- Casperson at col. 5, lines 14-16 and Duffer). (See, Rule 132 dec., par. 3).

As explained in the Rule 132 declaration, a significant difference in color homogeneity existed between the Invention Composition A and both Comparative

Compositions. (See, Rule 132 dec., par. 6). This vast difference in color homogeneity properties was surprising and unexpected given the similarity of the compositions tested. (See, Rule 132 dec., par. 6).

The improved color homogeneity properties obtained with the claimed combination of a metasilicate and an alkanolamine are representative of the present invention --- that is, it would be expected that compositions containing, in a cosmetically acceptable medium comprising water and having a basic pH, at least one oxidation dye and an alkalinizing agent, wherein the alkalinizing agent comprises at least one metasilicate selected from the group consisting of alkali metal, alkaline-earth metal or ammonium metasilicates and at least one alkanolamine, possess improved color homogeneity properties like those of the exemplified invention composition. (See, Rule 132 dec., par. 7).

The improved color homogeneity properties associated with the invention compositions are commercially significant --- hair coloring products which provide more homogeneous coloring on hair are more commercially viable than compositions which provide less homogeneous coloring. (See, Rule 132 dec., par. 9).

Thus, the invention compositions provide unexpectedly and significantly better color homogeneity properties than compositions containing (1) ethanolamine and (2) a silicate or ammonium hydroxide. Accordingly, even assuming a *prima facie* case of obviousness has been set forth (which as explained below is not the case), such a hypothetical case of *prima facie* obviousness has been rebutted. For this reason alone Applicants respectfully request reconsideration and withdrawal of the pending rejections under 35 U.S.C. § 103.

Furthermore, no *prima facie* case of obviousness has been set forth.

Regarding the rejection based upon Dias and Duffer, Applicants respectfully submit that this rejection is improper and should be withdrawn for at least the reason that no motivation would have existed to combine these references to yield the present invention. For example, Dias neither teaches nor suggests that magnesium silicate could be an alkalizing agent. In fact, Dias teaches away from such use of magnesium silicate because Dias does not include this silicate --or any silicate-- when discussing pH adjusters such as alkanolamines. (See, col. 22, lines 24-42). Duffer, on the other hand, discloses that sodium metasilicate and sodium silicate could be alkalizing agents. Thus, Dias and Duffer disclose different compounds having different functionalities. In view of this, no motivation could have existed to replace Dias's magnesium silicate (which is a magnesium salt of a silicate which is not disclosed as being an alkalizing agent) with Duffer's sodium metasilicate (which is sodium salt of a metasilicate which is disclosed as an alkalizing agent). This is particularly true for claims 5-10 and 31-33 which require specific concentrations and ratios.

Regarding the rejection based Casperson and Duffer, Casperson appears to suggest that (1) ammonium hydroxide, alkanolamines and “organic or inorganic alkalizing agents” can be used individually as alkalizing agents; and (2) ammonium hydroxide can be used in combination with alkanolamines or “organic or inorganic alkalizing agents.” However, Casperson does not teach or suggest that alkanolamines and “organic or inorganic alkalizing agents” can be used together, or any benefits resulting from such a combination. In stark contrast, the claimed invention requires the selection of at least one metasilicate and at least

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one alkanolamine. Casperson neither teaches nor suggests such a selection.

Thus, even assuming that the Office Action's interpretation of Duffer is correct and Duffer suggests that silicates and metasilicates are interchangeable, the combination of Casperson and Duffer would lead one skilled in the art to use a metasilicate or an alkanolamine, but not both as is required by the present invention. In other words, Casperson provides no motivation to specifically select elements in such a way as to yield the claimed invention.

This is particularly true for claims 5-10 (which require the presence of specific concentration ranges of alkalinizing agents) and claims 31-33 (which require the presence of specific ratios of alkalinizing agents): nothing in Casperson or Duffer would motivate one skilled in the art to combine the required alkalinizing agents in the specified amounts/ratios with the expectation that a composition having suitable dyeing properties would result, let alone a composition which also had improved sensory characteristics.

For all of the reasons discussed above, Applicants respectfully submit that no *prima facie* case of obviousness exists.

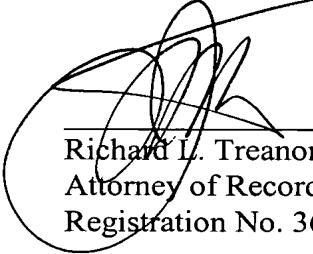
For all of the above reasons, Applicants respectfully request reconsideration and withdrawal of the pending § 103 rejections.

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Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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